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ABSTRACT

An analysis and discussion of regulations in the 1986 Immigration Reform and Control Act focus on policy issues concerning requirements for language proficiency and knowledge of United States history and government for immigrant amnesty. Five specific issues are addressed: 1) the discriminatory effect of requiring only amnesty applicants to demonstrate a knowledge of English and civics; 2) how much instruction is it reasonable to require of applicants and how are these requirements determined; 3) the standardization of the examination process and the suitability of test items; 4) the possible discrimination against applicants who are not literate; and 5) the status and future of ineligible immigrants. Greater care in addressing these aspects of federal regulation is recommended. (MSE) (Adjunct ERIC Clearinghouse on Literacy Education)

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by

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The Tomás Rivera Center encourages individual authors to express their analyses and opinions in the works published by the Center. The positions taken by individual authors, however, should not be taken as reflecting those of the Tomás Rivera Center, its staff, board of trustees, or funders. This paper is the second of three articles that Heide Wrigley, director of the Immigration Reform Language Issues Network, is writing for the Center on how the INS is interpreting the language requirements contained in the Immigration Reform and Control Act. The first is entitled "Tell Me the Name of Grant's Horse: Language Issues in the 1986 Immigration Act, March 1988."

In the beginning of 1989, the Immigration and Naturalization Service (INS) will publish the final regulations governing the 1986 Immigration Reform and Control Act (IRCA). The Act, designed primarily to control illegal immigration, contains special provisions that allow eligible, undocumented immigrants to become permanent, legal residents of the United States. These provisions require persons seeking amnesty either to demonstrate minimal proficiency in English and knowledge of U.S. history and government or to document that they have attended approved classes in civics and English as a Second Language.

Congress passed the IRCA; now the Immigration and Naturalization Service must interpret the law and publish regulations governing its implementation. Education has never been the domain of the INS, so the task of interpreting educational requirements and in effect setting language policy has been difficult. The final regulations reflect months of controversy and debate among the INS, language associations, educational agencies, legal coalitions, community-based organizations, and other advocacy groups. Required by law to publicize its efforts, the INS has circulated four sets of guidelines, each superceding the previous one: preliminary draft regulations, proposed regulations, interim final regulations, and this year, final regulations. As each draft has become public, various groups have responded by expressing their concerns, suggesting changes, and at times even lauding the INS for its efforts. Each set of regulations acknowledges comments these groups have made and incorporates some of their proposed changes. Throughout the process the INS has addressed a number of significant policy issues, which we will examine now.

The English and Civics Requirements: Why only Amnesty Applicants?

A number of advocacy groups have pointed out that requiring individuals who seek permanent resident status to demonstrate a knowledge of English and of U.S. history and government is highly unusual and discriminates against the amnesty population. Each year thousands of immigrants obtain green cards and function in this society without being proficient in English and without having the knowledge of history that the IRCA demands. In addition, these groups feel that it is unfair to require immigrants to study and recall the kind of information that even college-educated Americans often cannot remember. The INS defends itself against these criticisms by arguing that Congress, not the INS, included the educational provisions in the law,

which had little chance of passing without them. INS officials also point out that they, like everyone else, are "stuck" with the law and are trying their best to develop a generous, reasonable interpretation of Congressional intent. Reasonable men and women disagree, however, about what is reasonable and generous, and the controversy over the INS definitions and rules continues.

Mandatory Schooling: How Many Hours Are Reasonable?

Since most amnesty applicants do not have sufficient knowledge of English and U.S. history, thousands will have to attend classes in order to demonstrate, as the regulations say, "that they are successfully pursuing a course of study leading to such knowledge." How long these applicants will need to go to school has been a highly controversial issue, and each set of regulations has contained different requirements: the draft regulations stated that applicants had to finish thirty hours of a sixty-hour course; the proposed regulations stipulated a minimum of forty hours of a hundred-hour course; and the interim final regulations compromised by requiring at least forty hours of a sixty-hour course. Underlying the controversy are different attitudes toward mandatory schooling and varying interpretations of the intent of Congress. The Los Angeles Unified School District, for example, sees amnesty classes as helping those applying for amnesty to acquire the language and citizenship skills they need to enter the mainstream of U.S. society. District officials, who have lobbied for requiring classes to be longer, maintain that no one can learn English or acquire citizenship skills in a sixty-hour course. The district also adamantly refuses to teach what it calls "green-card English," that is, classes that teach only the minimal information necessary to meet the INS requirements for legalization.

In sharp contrast to the district's position, many advocacy groups regard mandatory schooling as a punitive measure that will create a hardship for many students. These groups point out that most amnesty applicants hold jobs (some have two) and have families to take care of so that scheduling time to attend class can be difficult and frustrating. In many families, both the husband and wife are eligible for legalization, which creates a need for child care. Groups lobbying for liberal interpretations of the law have advocated both fewer attendance hours and shorter courses and have urged education officials to join them in ensuring that the educational requirements do not become a barrier for those trying to meet their many other responsibilities along with the requirements for amnesty.

Language associations such as the California Association of Teachers of English to Speakers of Other Languages (CATESOL) have also expressed concerns about requiring forty out of one hundred hours. They, along with others, see the educational provisions as opening the door to schooling for individuals who might otherwise not consider learning English in the classroom. Although they agree that an individual with little knowledge of English will not become proficient in thirty, sixty, or even one hundred hours of instruction, they charge educational agencies with the task of motivating amnesty students to continue their education beyond the minimal required. Many advocacy groups have pointed out that, since resources are limited, making classes longer (that is, one hundred hours) would reduce the number of courses available, and therefore, especially in impacted areas such as Los Angeles, exclude some applicants from participating.

In the interim final regulations, the INS sought a compromise between the thirty/sixty and the forty/one hundred provisions by requiring that applicants attend at least forty hours of a sixty-hour course. That change meant that applicants who had already completed thirty hours, the amount required under the draft regulations, had to take an additional ten hours of class in order to receive an acceptable certificate.

The INS's educational policymaking has been based on an ad hoc rather than an established, standard language policy. Thus its efforts to please everyone are seen by many to be capricious and arbitrary. Because of the INS's ad hoc approach, the question of whose views will prevail in the final regulations is difficult to answer.

Testing: Will They Still Ask about Grant's Horse?

The opinions of educators and advocacy groups have influenced the regulations on testing by getting the INS to standardize somewhat its evaluation process so that arbitrary questions about General Grant's horse or the governor's wife are no longer permissible (as presumably they still are in the naturalization exam). The INS originally stated that its examiners would ask questions based on the content of the federal citizenship textbook series and suggested that students study the review questions in the back of those books. "What characteristic cannot be used to deny voting rights?" is one example. In reviewing that policy, a great many educators and advocacy groups found both the texts and their questions unsuitable for testing amnesty applicants. Some objected on philosophical or political grounds (the texts present the "clean" version of American history); others

raised pedagogical objections (the texts totally ignore recent advances in educating language-minority adults); still others cited linguistic concerns (a significant part of the vocabulary cannot be considered ordinary English as required in the legislation). As a partial response to these criticisms, the service has now outlined its testing procedures. In the face-to-face test, the INS examiner will assess the following:

- *Knowledge of history and government* by choosing ten questions from a predetermined set of one hundred questions based on the lower-level history and government texts;

- *Literacy* by asking applicants to read a sentence from the federal text and to write a dictated sentence. This form of evaluating literacy has been strongly criticized on two grounds: (1) Congress did not mandate literacy as part of English proficiency and (2) the proposed assessment is artificial, arbitrary, and unrelated to the kinds of literacy tasks applicants need to perform as members of U.S. society. So far, the INS has refused to address either concern seriously, stating only that those individuals who cannot pass the literacy test can attend language classes instead.

- *Minimal proficiency in ordinary English* by asking applicants to explain information on their application forms. Applicants with problematic applications (that is, ones that call for an explanation of absences from the country or of benefits received) may have to give explanations that require much more than minimal understanding of English. These applicants, already vulnerable, may be in double jeopardy as they become nervous and "forget their English" during the testing interview.

In its regulations the INS states that its examiners will take into account the educational background and language proficiency levels of applicants. How this will be done remains unclear. Many examiners do not have experience in simplifying or rephrasing questions, and the INS has not yet developed a protocol for evaluations. Such a protocol could outline not only what questions and answers are acceptable, but what strategies examiners could use to put applicants at ease, modify questions, give hints to individuals who seem unsure of their answers, and allow applicants to show what they know, not try to catch them on what they do not know. Unfortunately, there are no indications that the INS is developing guidelines and training that would make sensitivity toward different kinds of applicants a reality.

Responding to criticism of how it conducts face-to-face tests, the INS has pointed out that no one *has* to take an INS exam. In fact, applicants now have several options:

- Attend class for the requisite number of hours and obtain a certificate that exempts them from having to take a test.

- Take a standardized test that the Educational Testing Service (ETS) developed and is administering at various sites. The test is a multiple-choice test given in English. It assesses literacy by requiring applicants to write a sentence dictated by the examiner. It is expected to replace the INS's face-to-face exam, thus exempting students from having to take the naturalization exam later. How ETS will assess whether a dictated sentence is correct enough (for example, will spelling count?) is not clear. When asked what constitutes a good sentence, an ETS testing official responded, "You know, the

standard stuff, like does it have a period at the end." Literacy experts do not find emphasis on surface-level skills comforting. The ETS evaluation protocol has not been made public.

- Attest to forty hours of home study and take a proficiency exam that is much simpler than the ETS test. This would equal obtaining a classroom certificate, but could not be used to waive the citizenship exam. The text was developed by the Comprehensive Adult Assessment System (CASAS), which will help the INS develop a study guide. It is not clear why applicants must sign a form certifying that they have studied for forty hours, since a number of students could conceivably acquire the information in much less time or might already have it. Although much less content knowledge is required in the proficiency test and the questions appear simple, students who are unfamiliar with testing in which they hear a spoken question, match it with the appropriate response on an answer sheet, and "bubble in" that response will have difficulty coping with the exam.

Literacy: What about Applicants Who Are Not Literate?

Educators and advocacy groups who have worked with persons seeking amnesty estimate that a large percentage do not read and write English well enough to pass either the INS literacy test or two other standardized tests that have been approved by the immigration service. Although only the INS and the ETS tests (called section 312 tests) require students to write, all legalization exams require reading ability.

As a result of these requirements, students who are not literate in English will have to attend class and learn to read and write in order to receive a certificate. Applicants with low literacy skills and little English, who are vulnerable in many other respects as well, will have to shoulder the greatest burden of the amnesty requirements. In some rural areas, free classes may not be available. Moreover, the outreach efforts of the INS have often been inadequate, and applicants may not understand or be aware of the educational requirements they need to obtain legal status. This situation could encourage unapproved, private operators to charge exorbitant fees, offer overcrowded classrooms, and teach information irrelevant to the exam. Applicants who do not speak at least intermediate-level English (and who cannot read translated versions of the forms) will be unable to comprehend the INS application and may have to hire lawyers to fill it out. Such applicants may not be able to explain irregularities in their applications to the examiner's satisfaction, which puts them at risk of being denied legal residency. In the worst case, those who lack the sophistication to file for an appeal will have to leave the country.

It is clear then that applicants with little or no literacy skills, who are perhaps the neediest group of applicants, will have the greatest difficulties making their legal status permanent. To date it is not clear how the INS, school districts, and advocacy groups will ensure that individuals get the help they need to understand and

complete the process. Perhaps as much, if not more, energy needs to be expended on ensuring that individuals who do qualify for permanent status are not exploited nor in danger of reverting to illegal status simply because they lack literacy skills or are not sophisticated enough to make the system work for them.

Ineligibility: What about the Rest?

Although the 1986 IRCA provides over 2.7 million eligible immigrants with the opportunity to gain legal status, it does not address the plight of those who entered the United States after 1982 or who do not otherwise qualify for amnesty. Family members of amnesty applicants, for example, may be ineligible and therefore subject to deportation. The family fairness policy, which establishes a voluntary departure status, and thus a stay of deportation, for the relatives of applicants, varies according to area. Decisions rest with the INS district directors; to date, Texas and New York do not have family fairness policies.

Also ineligible are thousands of people, many from El Salvador, who cannot return to their home countries for economic and political reasons. Because the law establishes employer sanctions, these persons will probably not be able to find work beyond the most marginal, low-paying jobs, thus forming a new subclass of undocumented workers who, already on the bottom rung of the ladder, will slip even lower. They may become the true legacy of the Immigration Reform and Control Act since, in the words of Wayne Cornelius, "The U.S. immigration 'reform' legislation may finally succeed in creating the permanent underclass of illegal aliens that proponents of the 1986 law claimed it would eliminate."[1]

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[1] Wayne A. Cornelius, director of the Center for U.S. Mexican Studies, University of California, San Diego, in an article printed in the Los Angeles Times on 3 July 1988.

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